S.B.CIVIL WRIT PETITION NO.5575/2007

Col.Ashok Kumar Chouhan
v.
Ashok Kumar Jain & Anr.

Date of Order :: 6th September, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Bheemkant Vyas, for the petitioner.

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By order dated 2.6.2007 the Rent Tribunal, Bikaner rejected the application preferred by the petitioner to ignore the affidavits and documents filed by respondent landlord Ashok Kumar alongwith rejoinder.

The contention of counsel for the petitioner while assailing validity of the order aforesaid is that the Rajasthan Rent Control Act, 2001 does not permit to file any affidavit or documents alongwith rejoinder.

The contention so raised is having no merit in view of the judgment of this Court in the case of Anop Chand v. Nand Kishore & Ors., SBCivil Writ Petition No.4478/2007, decided on 30th July, 2007, holding therein as under:-

"It is of course true that sub-section (4)

does not say that the petitioner may file rejoinder accompanied by affidavits and documents and merely permits filing of rejoinder within 30 days of the date of service of reply; however, an occasion to file rejoinder would arise essentially when some averment or plea taken in the reply by the tenant calls for its replication from the applicant-landlord. If the suggestion that for want of omission of specific permission under sub-section (4) of Section 15 no affidavit or document could be filed with the rejoinder is accepted, it would lead to an absurd proposition that although the applicant may take pleadings in replication of any reply averments, yet cannot support and substantiate such plea taken in replication by way of oral or documentary evidence. Such result is neither envisaged by the statute nor could be countenanced.

Noteworthy it is that there is no prohibition contained in sub-section (4) of Section 15 that no document or affidavit could be filed alongwith rejoinder. Even if the rule of literal interpretation is applied, as repeatedly stressed by the learned counsel, the submission that no evidence in the form of affidavit or document could be filed with the rejoinder, is itself in the nature of reading a prohibition in sub-section (4) of Section 15 though there is no such prohibition contained. This Court is clearly of opinion that no prohibition in filing documents and affidavits with rejoinder could be read in sub-section (4) when there is none.

So far as permissibility of filing of documents and affidavits with rejoinder is concerned, the provision being an integral part of the scheme of completion of pleadings and evidence before the Tribunal fixes a date of hearing per sub-section (5) and holds summary enquiry per sub-section (6), it inheres in such provision of sub-section (4) that if any pleading is taken by way of rejoinder, the same could be supported with necessary affidavit and necessary documents. It is merely that the legislature has not spelt out the obvious that the plea in rejoinder could be supported and substantiated by affidavits and documents."

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Apart from the fact that sub-section (4) of Section 15 contains no prohibition in filing of affidavits and documents with rejoinder, when the Tribunal is to be guided by the principles of natural justice and has wide powers to regulate its procedure and to call any witness per section 21, it cannot be said that the Tribunal cannot permit filing of additional affidavit or document after filing of the petition or the reply, as the case may be.

Thus, if the interpretation as suggested on behalf of the petitioner is accepted, firstly it would only be leading to an absurd result; and secondly, such interpretation could be made only if sub-section (4) of Section 15 is read in

> isolation and in disjunction of other provisions of Section 15 and only when Section 21 of the Act is kept at bay. This Court is clearly of opinion that a procedural provision of the statute cannot be read or interpreted in the manner suggested on behalf of the petitioner."

In view of the law laid down by this Court in the case of Anop Chand (supra), this petition for writ is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.